Testimony By Ms. Linda H Lamone

State Administrator of Elections

Maryland State
Board of Elections

Thank you for the opportunity to address the Committee on House Administration and the Committee on Science on the impact of the voting systems guidelines adopted by the U.S. Election Assistance Commission in December 2005. As the Chief Election Official in Maryland and an active member of the National Association of State Election Directors, federal voting system standards have historically provided state and local election officials with a level of assurance that a voting system accurately counts and records votes and meets the minimum performance and testing standards. The 2005 Voluntary Voting Systems Guidelines (VVSG) enhance the prior voting system standards and, by raising the minimum standards, will provide greater assurances to election officials, candidates, and the voting public.

Application of Federal Voting Systems Standards in Maryland

Under section 9-102 of the Election Law Article of the Annotated Code of Maryland, a voting system in Maryland cannot be State certified unless an approved independent testing authority has tested the voting system and shows that it meets the performance and test standards for electronic voting systems. Although Maryland's law does not require that a voting system meet a specific version of the standards, the current language enables the State of Maryland to have voting systems tested against the most recent standards without having to amend the statute each time the standards are revised.

The State of Maryland began its implementation of a statewide, uniform voting system in 2002. The request for proposals required that "all equipment and software proposed must comply with the Federal Election Commission's voting system standards regarding DRE and optical scan equipment."[1] Since Maryland's voting

system was procured and implemented in twenty-three of twenty-four jurisdictions before the voluntary voting system standards were released for comment, the voting system met the current standards at the time - the 1990 and later the 2002 standards.

As section 9-102 of the Election Law Article includes the VVSG and any subsequent revisions, no additional steps are necessary for the State to adopt these guidelines. Once the independent testing authorities begin testing against the VVSG, future software versions of the State's uniform voting system will be tested against these guidelines.

Impact of 2005 Standards on Purchasing & Operational Decisions

As every jurisdiction should know that the VVSG are the only federal standard against which voting systems will be tested starting December 2007, the ability of a voting system to meet the VVSG should be a critical factor for a jurisdiction selecting a voting system. With at least forty-seven states requiring local jurisdictions to comply with federal standards and guidance, the majority of states recognize the importance of federal standards and guidance.[2] That being said, I suggest to you that whether the VVSG are "comprehensive enough" is not a factor guiding voting system purchasing decisions (although it may be factor in determining whether additional testing is required); the paramount inquiry is whether the voting system meets the guidelines.

Improve Likelihood of States to Accept VVSG

It is my opinion that the VVSG will become de facto mandatory for

several reasons. First, the majority of states require compliance with federal guidelines. These states laws may already require compliance with new guidelines once they become effective.

Second, jurisdictions using old voting systems (i.e., punch card voting system and mechanical lever machines) can no longer use those systems if they accepted federal funds under the Help America Vote Act of 2002. As vendors will not likely risk losing potential clients by selling voting systems that do not meet the VVSG, they will most likely only be offering voting systems that meet the VVSG. As a result, the majority, if not all, of voting equipment on the market for the 2008 elections will most likely meet the VVSG.

Third, according to the U.S. Election Assistance Commission, voting systems will no longer be tested against prior versions of the guidelines once the VVSG are in effect. Once testing against prior guidelines ends, new voting systems and upgrades to existing systems will need to meet the VVSG or risk not being certified. With no other guidelines against which to test, there will no longer be different standards of certification (i.e., meets 2002 standards but not VVSG, etc.)

Lastly, the political pressure against purchasing or using a system that does not meet the guidelines will be high. With the litigious nature of advocacy groups, it will be difficult for jurisdictions to justify selecting and using a voting system that does not meet the guidelines.

Although I believe that most states will accept the VVSG, there is one additional enhancement to the guidelines that could provide an additional incentive. In addition to certification by the U.S. Election Assistance Commission, many states have a state certification process. To the extent that the VVSG could be revised to include state-specific certification requirements, state election officials could accept the certification by the U.S. Election Assistance Commission as the basis of state certification. This joint certification would reduce the resources needed to conduct state certification without a reduction in confidence in the voting system.

Human Factors & Voting Systems

Under Maryland law, a system's "ease of understanding for the voter" and "accessibility for all voters with disabilities recognized by the Americans with Disabilities Act" are required considerations for State certification of a voting system.[3]

Although usability of voting systems generally gets lost in the on-going debate about voting systems, the ability of a voter to understand how to vote is equally important as the security of a voting system.

The new usability guidelines in the VVSG are an important addition. The new requirements and the expected usability guidelines in the next version of the VVSG, coupled with recent studies by the National Institute of Standards and Technology (NIST) and other academics, will only enhance the usability of voting systems.[4] Although Maryland's voting system vendor has incorporated findings of prior usability studies into its voting systems, I expect that greatest impact of these requirements and studies will be in future voting systems and software upgrades.

Conclusion

It is important to consider the VVSG as a long-term strategy to improve voting systems in the United States. These guidelines cannot be viewed as a panacea with an immediate and dramatic impact on elections; their impact will be gradual and will not be known for several election cycles.

Voting system vendors need time to make the required software and hardware changes to their products. Similarly, independent testing authorities need time to develop the necessary performance and test guidelines to use during testing. Although the guidelines are referred to as the "2005 VVSG," the U.S. Election Assistance Commission recognized that the infrastructure would need to develop before the VVSG could be effective. For this reason, the Commission made the guidelines effective in December 2007. For these reasons, the first elections when voting systems tested against the VVSG would most likely be used are the 2010 elections.

Equally important, State and local jurisdictions typically consider voting systems as long-term investments. Maryland, for example, has projected a fifteen-year life cycle for its current voting system. When the VVSG become effective, some jurisdictions might be faced with the following choice - either scrap a voting system that does not meet the VVSG or procure a voting system that does. Although federal funding offset some of the expenses associated with purchasing and implementing a new voting system, it cannot cover all of the on-going maintenance costs or costs of a new system.

Also, the involvement of the NIST in the election arena is new. NIST's leadership of the Technical Guidelines Development Committee has been critical in updating the voting system standards, and its establishment of the National Voluntary Laboratory Accreditation Program will impact future testing against the standards. As their role has just begun and continues to evolve, it is important to allow NIST to put into place standards and procedures to impact voting system certification.

In conclusion, I would like to compare the process of improving voting systems to the process of improving air quality. When the U.S. Congress enacts a law to limit air pollution, the date by which the affected industry must comply is often ten years down the road. This delayed effective date allows the industry to evaluate options, develop technologies that will enable them to comply with the mandates, and implement the necessary changes to the industry's infrastructure.

I believe this is how voting system technology should be viewed. In the meantime, however, the VVSG are a good first step, but they must be viewed as the first step of many. Like cleaning our air, improving voting systems takes time, and I caution you not to expect overnight changes to voting systems.

[1] See Section 2.1, Request for Proposals: Direct Recording Electronic Voting System and Optical Scan Absentee Voting System for Four Counties, Project No. SBE-2002.01, www.elections.state.md.us/pdf/procurement/rfp.pdf.

[2] "States and the District of Columbia Reported Requirements for Local Jurisdictions to Use Federal Standards for Voting Systems," Appendix X, The Nation's Evolving Election System as Reflected in the November 2004 General Election, GAO-06-450, June 2006.

[3] See § 9-102(d)(6) and (10), Election Law Article, Annotated Code of Maryland.

[4] See Herrnson et al, A Project to Assess Voting Technology and Ballot Design, www.capc.umd.edu/rpts/VoteTechFull.pdf.